

### REMARKS/ARGUMENTS

The Examiner states that the inventions of Groups I and II are drawn to two clearly distinct products, such as cellular and chemical products that are lymphocytes cells (Group I) and chemical compound or plant extracts (Group II).

However, the two products are not distinct, since the medications of the claims of Group I may contain reserpine, which may be derived by a galenical extract from Rauwolfia serpentina. Therefore, the relationship between the inventions of Groups I and II is that of combination-subcombination under M.P.E.P. §806.05(c) with the combination being the claims of Group I and the subcombination being the claims of Group II. Since two-way distinctness is required to support a requirement for restriction between groups related as combination-subcombination and such two-way distinctness has not been demonstrated by the Examiner, it is requested that the Restriction Requirement be withdrawn and the claims of Groups I and II be rejoined and examined in the present application.

The Examiner states that the inventions of Groups I and III-V are related as process of making and product made under M.P.E.P. §806.05(f) and that the Group I product can be made by another and materially different process like that of the Abstract of JP3-080076.

However, it can be seen that the Abstract of JP3-080076 is not related to producing medications by activating lymphocytes and inducing heat shock proteins in the activated lymphocytes, but only to a process of selectively proliferating lymphocytes and there is no indication in the Abstract of the reference that the medication of the claims of Group I could be produced from the process of the reference. Therefore, it is submitted that the requirements of M.P.E.P. §806.05(f) have not been met and it is requested that the claims of Groups I and III-V be rejoined and examined in the present application.

The Examiner states that the inventions of Groups I and VI are related as product and process of use under M.P.E.P. §806.05(h) and that the process for using antitumor or antiviral

medications with stress proteins having molecular weight of 70 kDA can be practiced with another materially different product derived from a genetically engineered expression system including microbial cells, for example, see Abstract U.S. 5,891,653.

However, the Examiner has presented no arguments supporting the proposition that the method of Claim 54 of Group VI involving activating lymphocytes and administering the lymphocytes and galenical extract to a living body to provide antitumor or antiviral medications would be transferable to microbial cells and, in fact, it can be argued that microbial cells would fall under the objects treated by the method of Claim 54, since living bodies would include microbial cells. Therefore, it is submitted that the requirements of M.P.E.P. §806.05(h) have not been met and it is requested that the claims of Groups I and VI be rejoined and examined in the present application.

Further, if the claims of Group I are ultimately found allowable, it is requested that the claims of Groups III-VI be rejoined under M.P.E.P. §821.04 and allowed in the present application, also.

Accordingly, for the reasons presented above, it is submitted that the Patent and Trademark Office has failed to meet the burden necessary to sustain the Restriction Requirement. Withdrawal of the restriction requirement is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)  
REM/rac



Roland E. Martin  
Registration No. 48,082